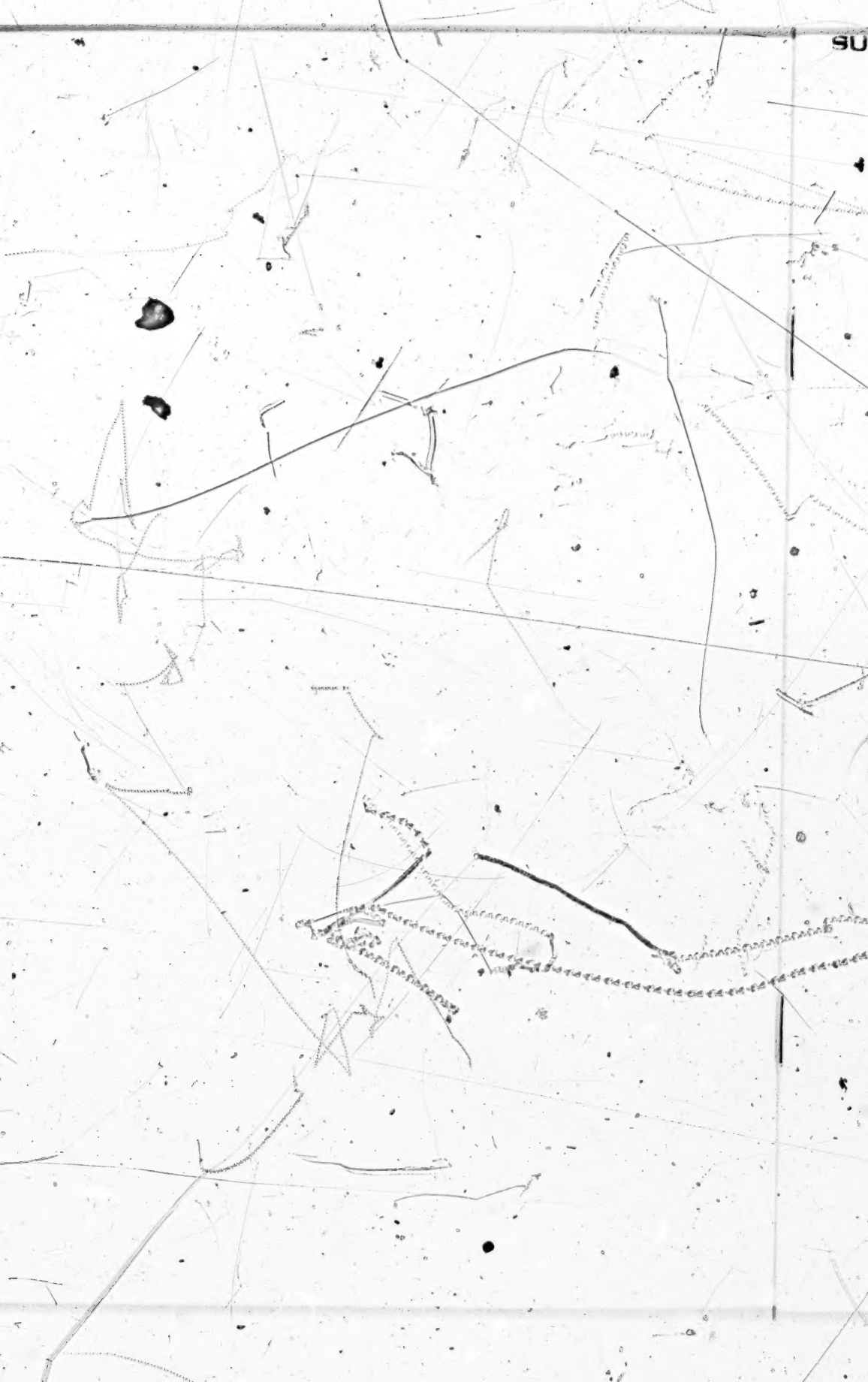

PREME COURT, U. S.

No. 207 [redacted]

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In the Supreme Court of the United States

.....: TERM, 19 69

WALTER M. MEEKS,
Petitioner,

vs.

STATE OF ARIZONA,
Respondent.

REPLY BRIEF

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REPLY BRIEF

The substance of the Responding Brief of the State of Arizona is that the same considerations which envelope grand jury proceedings with the cloak of secrecy apply to a preliminary hearing. The contention is that there should be no disclosure of a pending criminal accusation unless and until a criminal charge is in fact made against the defendant; otherwise unfounded accusations may damage a defendant's reputation and violate his right to a fair trial. A defendant should be entitled it is asserted, if he wishes, to avoid "having his most secret and private misdeeds become public property" (R.B.10).

Respondent does not recognize that very real and effective provisions of the Arizona Rules of Criminal Procedure block the "unfounded accusations" suggested by Respondent.

Rules 1 and 2 (Vol. 17 A.R.S. p.172) provides:

RULE 1. COMMENCEMENT OF ACTION BY COMPLAINT; DUTY OF MAGISTRATE

A. All criminal actions and proceedings brought before any magistrate for a public offense, triable within the county, shall be commenced by complaint, in writing, under oath, setting forth the offense charged, with such particulars of time, place, person and property as to enable the defendant to understand distinctly the character of the offense complained of.

B. When a complaint is made to a magistrate that an offense has been committed, he shall examine on oath the complainant and any witness the complainant produces and any witness subpoenaed by the magistrate. If the county attorney so requests, the magistrate shall subpoena witnesses for examination. The magistrate may take the affidavit of any such witness and cause the affidavit to be subscribed by the person making it.

RULE 2. ISSUANCE OF WARRANT OF ARREST

A warrant shall be issued, except as provided by subsections A and B in Rule 11, for the arrest of the person complained against if the magistrate from the examination of the complainant and the witnesses, if any, has reasonable ground to believe that an offense was committed and that the person against whom the complaint was made committed it.

Thus it is plain that a charge under oath must be made that a named defendant has committed a named criminal offense specifying "such particulars of time, place, persons and property as to enable the defendant to understand distinctly the character of the offense complained of."

Not only this but the Magistrate must examine the complainant under oath and any witnesses the magistrate

may subpoena to satisfy himself that a warrant of arrest should issue and it is only "if the magistrate from the examination of the complainant and the witnesses, if any, has reasonable grounds to believe that an offense has been committed and that the person against whom the complaint was made committed it" that a complaint is accepted for filing and a warrant of arrest issued.

Rules 16 and 17 provide:

RULE 16. DUTY OF MAGISTRATE

When the defendant is brought before the magistrate after arrest, either with or without a warrant, on a charge of having committed an offense which the magistrate is not empowered to try and determine, the magistrate shall immediately inform him:

1. Of the charge against him.

2. Of his right to the aid of counsel during the preliminary examination.

3. Of his right to waive such examination.

RULE 17. WAIVER OF EXAMINATION

A. The defendant may waive a preliminary examination. If he does, the magistrate shall hold him to answer and shall either admit him to bail or commit him to custody as provided by subsection A of Rule 33.

B. Notwithstanding a waiver of examination by the defendant, the magistrate, on his own motion may, or on the demand of the county attorney shall, examine the witnesses for the state and have their testimony reduced to writing or taken by a court reporter and transcribed.

C. After hearing the testimony, if it appears that there is not probable cause to believe the defendant guilty of an offense, the magistrate shall order that he be discharged.

There is no provision, under Arizona law for secrecy as to the fact a complaint under oath has been made against a defendant disclosing the name of the defendant and the particulars of the crime with which he is charged and that a warrant has issued for his arrest. Since no such charge will be accepted or warrant issued until the magistrate, from his inquiry, has reasonable grounds to believe the complaint meritorious, frivolous and baseless charges receive no publicity. Therefore, under Arizona law the inquiry becomes an investigation of a specific individual's conduct in which the public has a legitimate interest.

A grand jury, under Arizona law, is not empaneled to investigate individuals but criminal offenses. In *Wales vs. Tax Commission,* 100 Ariz., 181, 412 P.2nd 472, the Arizona Supreme Court said:

> "As stated, the response suggests that the Pima County Grand Jury is presently investigating certain named individuals. The function of a grand jury is to investigate criminal offenses, not the conduct of individuals. Rule 92, Rules of Criminal Procedure, 17 A.R.S. It is not permitted to speculate that some person might have committed an offense and, therefore, to investigate individuals to determine what, if any, offenses may possibly have been committed by them."

In *State vs. Superior Court* 95 Ariz. 319, 390 P.2d 109, the Arizona Supreme Court quoted with approval from *Pittsburg Plate Glass Co. vs. United States,* 360 U.S. 395, 79 S. Ct. 1237, 3 L.Ed.2d 1323 (1959) as follows in part:

> "Ever since this action by the Fathers, the American grand jury, like that of England, 'has convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor.' Ibid. Indeed, indictments may be returned on hearsay, or for that matter, even on the knowledge of the grand jurors

themselves. Id., 350 U.S. at pages 362, 363, 76 S.Ct. at pages 408, 409 [100 L.Ed. 397]. To make public any part of its proceedings would inevitably detract from its efficacy. Grand jurors would not act with that independence required of an accusatory and inquisitorial body. Moreover, not only would the participation of the jurors be curtailed, but testimony would be parsimonious if each witness knew that his testimony would soon be in the hands of the accused."

The grand jury as a cross section of the people of the county represents the conscience of the county. There is no room for political favoritism or financial gain from action or inaction. It is impanelled as an inquisatorial body to search out and investigate crime not in the first instance if a particular individual may or may not have committed a crime.

Once its deliberations are completed by return of an indictment the fact of the criminal charge laid against a defendant is public knowledge, subject only to the defendant being taken into custody. Witnesses before the grand jury may be freely interviewed after their testimony has been given and their version of the testimony which they gave before the grand jury freely publicized *State vs. Superior Court, supra,* (95 Ariz. at 331, 390 P.2d at 117, 118).

After the magistrate has established there is probable cause to believe a criminal offense has been committed, and that a given person has committed it the public then has a real stake in making sure its prosecuting officials act competently and fairly and that its magistrates act justly and fairly. It is just as important also for the public to know whether oppression is being practiced by its officials as it is to know that justice is dispensed without fear or favor.

Closed doors breed suspicion and distrust. When it

is known that a citizen, prominent or otherwise, has been accused under oath of the Commission of a criminal offense and that a public official charged by law with the responsibility of making inquiry as to the probable validity of such charge has found probable cause to believe a crime has been committed and that the defendant committed it the public is then entitled to know and observe how its officials function.

It has long been the function of reporters to become the eyes and ears of the public to the end that it become and remain informed. To the extent that reporters are excluded from access to newsworthy proceedings in which the public has a legitimate interest for the purpose of preventing publication of words spoken and action taken to that extent we have de facto censorship. Certainly this is as much an invasion of constitutional guarantees as similar action by direct order of a judge or physical use of the censors shears.

Respectfully submitted,

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By .....

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AFFIDAVIT

STATE OF ARIZONA)
: ss.
County of Maricopa)

MARK WILMER, being first duly sworn, upon oath, deposes and says:

That he is the attorney for the Petitioner; that as such he served the attorney for Respondent in the foregoing case by forwarding two (2) exact copies of the Reply Brief in a sealed envelope, first class postage prepaid, and depositing same in the United States mail addressed to:

Gary K. Nelson, The Attorney General
Carl Waag, Assistant Attorney General
Attorneys for Petitioner
State Capitol Building
Phoenix, Arizona

this ..... day of August, 1969.

MARK WILMER

Subscribed and sworn to before me this ..... day of August, 1969

My Commission Expires:

Notary Public